

DISTRIBUTION  
County Board  
County Clerk  
County Administrator  
Public Works

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF LAKE )

Agenda Item #

**45**

COUNTY BOARD, LAKE COUNTY, ILLINOIS

ADJOURNED REGULAR SEPTEMBER A.D., 2007 SESSION

FEBRUARY 12, A.D., 2008

MADAM CHAIR AND MEMBERS OF THE COUNTY BOARD:

Your Public Works and Transportation Committee and Financial and Administrative Committee present herewith a Joint Resolution authorizing execution of An Intergovernmental, incorporating the Restated and Amended Wholesale Agreement for Sewage Disposal and the Agreement for Retail Sanitary Sewer and Water Supply Services between the Village of Gurnee and the County Regarding the Western Area of the Village; and request its adoption.

Respectfully submitted,

<u>Diana O'Kelly</u>	Aye	Nay
CHAIR	✓	
<u>Paul S.</u>		✓
VICE CHAIR		
<u>Michael H. Alvest</u>	✓	
<u>Ann B. Maio</u>	✓	
_____	_____	_____
_____	_____	_____

PUBLIC WORKS AND TRANSPORTATION  
COMMITTEE

<u>[Signature]</u>	Aye	Nay
CHAIR	X	
<u>Ann Flang-B.</u>	✓	
VICE CHAIR		
<u>[Signature]</u>	✓	
<u>Diana O'Kelly</u>	✓	
_____	_____	_____
_____	_____	_____

FINANCIAL AND ADMINISTRATIVE  
COMMITTEE

## RESOLUTION

WHEREAS, the County of Lake (County) owns and operates a system of interceptor sewers in the Northeast Central Lake Facilities Planning Area that transports sewage for treatment from wholesale communities to the NSSD Treatment Plant; and

WHEREAS, the County previously entered into an Agreement for Sewage Disposal dated November 14, 1977 with the Village of Gurnee (Village), which has since expired; and

WHEREAS, the County and the Village desire to enter into a Restated and Amended Wholesale Agreement for Sewage Disposal; and

WHEREAS, the County and the Village desire to enter into an Agreement for Retail Sanitary Sewer and Water Supply Services, and

WHEREAS, these wholesale and retail agreements will be incorporated into a master intergovernmental agreement (IGA) between the County and the Village designed to promote proper planning for sewer and water services, discourage competition over sales tax and assist the County's investment in transportation, and

WHEREAS, execution of an Intergovernmental Agreement must be authorized by Resolution of this County Board.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chairman of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute an Intergovernmental Agreement Between the Village of Gurnee and the County of Lake Regarding the Western Area of the Village in substantially the attached form.

DATED at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 12th day of February A.D., 2008.

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF GURNEE  
AND THE COUNTY OF LAKE REGARDING THE WESTERN AREA OF THE  
VILLAGE**

This Intergovernmental Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_, 2008, by and between the VILLAGE OF GURNEE, an Illinois municipal corporation (the "Village"), and the COUNTY OF LAKE (the "County")(the County and the Village are sometimes collectively referred to herein as the "Parties").

**RECITALS**

- A. The Village and the County have agreed to enter into this Agreement in order to promote the County's and Village's proper planning for sewer and water services and related infrastructure investment and to discourage a competition over sales tax revenue with respect to future uses proposed in designated areas.
- B. The County is currently providing or has agreed to provide retail sewer and water services to designated areas in the western portion of the Village (the "Gurnee Retail Service Area") as depicted on Exhibit 1, attached to this Agreement.
- C. The County and Village entered into an Agreement for Sewage Disposal dated November 14, 1977, pursuant to and subject to the terms of which the County provides wholesale sewer services to the Village, which agreement expired in November 2007.
- D. The parties have agreed to enter into an amended and restated agreement for the provision of wholesale sewer services to certain areas within or to be annexed into the Village (the "Village of Gurnee Wholesale Sewer Service Area"), as depicted on Exhibit 2, attached to this Agreement, subject to certain additional conditions and limitations with respect to the Village of Gurnee West Sewer Service Area, as

depicted on Exhibit 2, attached to this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties hereby agree as follows:

Section 1.     Recital. The foregoing recitals are material to this Agreement and are incorporated herein as though fully set forth in this Section 1.

Section 2.     Retail Sewer and Water Services to Certain Village Parcels. The County agrees to provide retail sanitary sewer and public water services to the Gurnee Retail Service Area; provided, however, that such sanitary sewer and water services shall be delivered in accordance with the "Agreement for Retail Sanitary Sewer and Water Supply Services to the Village of Gurnee" between the Village and the County (the "Gurnee Retail Sewer and Water Services Agreement"), which Retail Sewer and Water Services Agreement is attached to this Agreement as Exhibit 3 and is hereby approved by the County and the Village.

Section 3.     Wholesale Sewer Service to the West Village Service Area. The County agrees to provide sanitary sewer services to the Village of Gurnee Wholesale Sewer Service Area, including the Village of Gurnee West Sewer Service Area; provided, however, that such sanitary sewer service to the Village of Gurnee West Sewer Service Area shall be limited to non-residential uses only, except for residential development existing and having obtained a certificate of occupancy as of the date of this Agreement; provided further that such sanitary sewer service to the Village of Gurnee Wholesale Sewer Service Area shall be delivered in accordance with the

“Restated and Amended Wholesale Agreement for Sewage Disposal” between the Village and the County (the “Restated Wholesale Sewer Agreement”), which Restated Wholesale Sewer Agreement is attached to this Agreement as Exhibit 4 and is hereby approved by the County and the Village.

Section 4.    Enforcement of Boundary Agreement. The Village and the Village of Lindenhurst have entered into that certain agreement entitled “Agreement By and Between The Villages of Gurnee and Lindenhurst, Illinois Municipal Corporations Located in Lake County, Illinois, Pursuant to Section 11-12-9 of Chapter 24 of the Illinois Revised Statutes” and dated April 8, 1991, as amended by Amendment dated January 14, 2002 (the “Gurnee/Lindenhurst Boundary Agreement”), which agreement precludes the Village of Lindenhurst from annexing certain properties generally located north of Illinois Route 132 and east of U.S. Highway 45. The Village agrees to enforce the Gurnee/Lindenhurst Boundary Agreement and not to amend such agreement in any manner that would permit the Village of Lindenhurst to annex those certain properties east of U.S. Highway 45 depicted on Exhibit 5, without the written consent of the County. In the event that the Village is in breach of its obligations under this Section, the County, in addition to any other available remedies at law or in equity, shall have the right to defer approval of any further permit applications for sanitary sewer service until such time as the Village cures any outstanding breach under

this Section.

Section 5. Non-Annexation of Certain Properties by the Village. The Village will not annex, enter into any annexation agreement, pass any ordinance annexing or authorizing any petition to annex any of those certain unincorporated properties generally located north of Illinois Route 132 and east of U.S. Highway 45, as depicted on Exhibit 5, without first having entered into a sales tax-sharing agreement with the County, which agreement shall provide that the County continue to receive one hundred percent (100%) of the local portion of the retailers' occupation tax and service occupation tax (which local portion is currently one percent (1%) of sales or sixteen percent (16%) of sales tax collections), or, in the event the State Legislature in the future initiates a replacement tax comparable to the retailers' occupation tax and service occupation tax in effect as of the date of this Agreement then such comparable local portion of any such replacement tax, for a period of twenty (20) years following the effective date of the annexation of any such parcels. In the event that the Village is in breach of its obligations under this Section, the County, in addition to other available remedies at law or in equity, shall have the right to defer approval of any further permit applications for sanitary sewer service until such time as the Village cures any outstanding breach under this Section.

Section 6 Roadway Financing. In additional consideration for the County's agreement to provide sanitary sewer service to the West Village Service Area, the

Village agrees to fund a portion of the County's costs in making improvements to county highways in the Village of Gurnee. At the time of final planned development approval of any property within the West Service Area, the Village shall pay the County \$0.50 per square foot of gross building area of nonresidential development approved out of impact or annexation fees, developer contributions, special service area revenues, or any other revenues that can be lawfully used for such purpose. The Village shall remit such monies to the County, if collected in part or in whole via impact or annexation fees or developer contributions, within 60 days of their collection, or, if obtained from other revenue sources, within 60 days of final development approval. The County shall establish a segregated interest-bearing account within the County system of accounts to be held in escrow by the County to fund a portion of the direct costs associated with the engineering, design, or construction of such county highway improvements. Interest earned on the Fund shall be held in, and shall become part of the Fund. Upon receipt of the Village's payment of roadway fees, the County shall deposit such monies into the Fund and provide the Village a written certification that such payment has been received by the County and deposited in the Fund. Upon expenditure of monies from the Fund to cover any costs for improvements of county highways in the Village, including reimbursing expenditures for improvements of county highways in the Village paid out of other accounts in the County system of

accounts, the County shall provide the Village a written accounting of the amount of such expenditure and the purpose of such expenditure. If there remains monies in the Fund at the end of five (5) years from the time of Village approval of the final development approval for all developable parcels within the West Village Service Area, and if the County has not formally committed such remaining monies by such time toward designated county highway improvements within the Village, the County shall remit the remaining and uncommitted monies therein to the Village. Upon receipt of such monies, the Village may use them for any lawful purpose.

Section 7.     Notice. All notices, elections, and other communications between the Parties hereto shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the Village:	Village of Gurnee Attention: Village Administrator 325 N. O'Plaine Road Gurnee, IL 60031
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If to the County:	County of Lake Attention: County Administrator 18 North County Street Waukegan, Il 60085
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Notices shall be deemed received on the third business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt, if personally delivered.



Section 7.     Joint Defense. In the event that a third-party should make a claim or demand or file a suit challenging the provisions of this Agreement (a "Claim"), the Parties shall jointly defend themselves, each other, and this Agreement against such Claim, unless the Parties mutually agree to modify the Agreement in a manner that would negate the Claim.

Section 8.     Interpretation and Severability. It is the intent of the Parties that new development within the Village of Gurnee West Sewer Service Area be developed for non-residential purposes only (except for residential uses existing and having obtained a certificate of occupancy as of the date of this Agreement), and this Agreement has been entered into to further this purpose. It is the further intent of the County and the Village that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. Notwithstanding the foregoing, to the extent that a Claim succeeds against the Parties that would permit the extension of sanitary sewer service to new residential development within the Village of Gurnee West Sewer Service Area or otherwise be inconsistent with the terms or intent of this Agreement, the Restated Sewer Agreement, or the

Retail Sewer and Water Agreement, then this Agreement shall be interpreted to automatically withdraw the County's approval to allow sanitary sewer services to such portion of the Village of Gurnee West Sewer Service Area (including the entire Village of Gurnee West Sewer Service Area, if applicable), and any provision of this Agreement or the Restated Sewer Agreement to the contrary shall be deemed null and void.

Section 9.     Property Owner Agreements. The Village agrees that it shall not hereafter annex any territory located within the Village of Gurnee West Sewer Service Area depicted on Exhibit 2 to this Agreement unless the Village has entered into an annexation agreement with the owner(s) of record of such territory, which agreement shall expressly incorporate the terms of this Agreement and the Restated Sewer Agreement, and which agreement shall also require the owner(s) of record of such territory and such owner's or owners' successors in interest to such territory to release any claims against the County and the Village with respect to either (i) the terms, conditions, and limitations upon sanitary sewer service as set forth in the Restated Sewer Agreement or (ii) the requirements or restriction as set forth in Section 3 of this Agreement.

Section 10.     Term; Amendment. This Agreement shall continue in full force and effect for a period of twenty (20) years from and after the date first above written when executed by the duly authorized representatives of the County and the Village, unless this Agreement is (a) amended by mutual consent of the

Parties, or (b) modified as a result of a Claim (see Section 7 above).

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized corporate representatives and have caused their corporate seals to be hereunto affixed all as of the day and year first above written.

VILLAGE:

Village of Gurnee

By: \_\_\_\_\_  
Village President

COUNTY:

The County of Lake

By: \_\_\_\_\_  
Chairman, Lake County Board

Attest: \_\_\_\_\_

Village Clerk

Attest: \_\_\_\_\_

County Clerk

STATE OF ILLINOIS        )  
                                      )       SS  
COUNTY OF LAKE        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the Village President and Clerk, respectively, of the Village of Gurnee, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Clerk, they signed and delivered the said instrument as such President and Clerk of said Village, and caused the corporate seal of said Village to be affixed thereto, pursuant to authority, given by the Board of Trustees of said Village as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

Notary Public

STATE OF ILLINOIS        )  
                                      )       SS  
COUNTY OF LAKE        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, personally known to me the Board Chairman and Clerk, respectively, of the County of Lake, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Board Chairman and Clerk, they signed and delivered the said instrument as such Board Chairman and Clerk of said County, and caused the corporate seal of said County to be affixed thereto, pursuant to authority, given by the Lake County Board as their free and voluntary act, and as the free and voluntary act and deed to said County, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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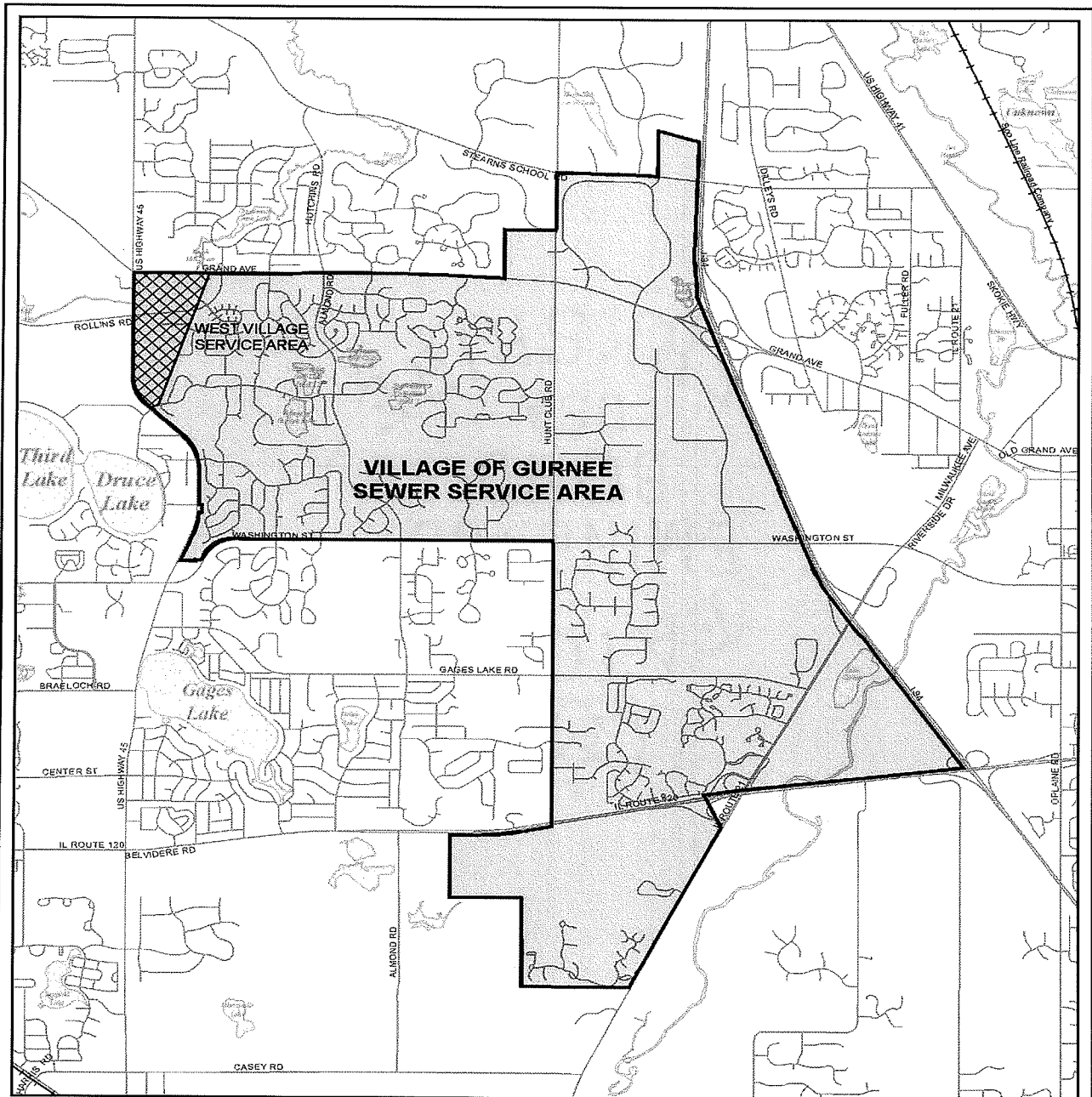
Notary Public

**EXHIBIT 1**  
**GURNEE RETAIL SEWER AND WATER**  
**SERVICE AREA MAP**

**LakeCounty**  
 Department of Public Works  
 650 West Winchester Road  
 Libertyville, Illinois 60048  
 (847) 377-7500  
 (847) 377-7173 FAX

SEPTEMBER 2007

# EXHIBIT 2 (IGA)



**LakeCounty**  
 Department of Public Works  
 650 West Winchester Road  
 Libertyville, Illinois 60048  
 (847) 377-7500  
 (847) 377-7173 FAX

## EXHIBIT 2 VILLAGE OF GURNEE WHOLESALE SEWER SERVICE AREA



SEPTEMBER 2007

EXHIBIT 3 (IGA)

GURNEE RETAIL SEWER AND WATER SERVICE AGREEMENT



**AGREEMENT FOR RETAIL SANITARY SEWER AND WATER SUPPLY  
SERVICES TO THE VILLAGE OF GURNEE**

**Entered Into By and Between**

**The County of Lake**

**and**

**The Village of Gurnee**

**As of**

**\_\_\_\_\_, 2008**

**AGREEMENT FOR RETAIL SANITARY SEWER AND WATER SUPPLY  
SERVICES TO THE VILLAGE OF GURNEE**

THIS AGREEMENT is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2008, and is made and entered into by and between the COUNTY OF LAKE, an Illinois unit of local government, hereinafter referred to as the "County," and the VILLAGE OF GURNEE, an Illinois municipal corporation, hereinafter referred to as the "Village."

**RECITALS**

1. The public health, welfare, and safety of the residents of the County require the development of coordinated and adequate systems for the collection and treatment of sewage so as to eliminate pollution of lakes and streams and the provision of safe and sufficient public water supplies.

2. Pursuant to "An Act in Relation to Water Supply, Drainage, Sewage, Pollution, and Flood Control in Certain Counties," as amended, 55 ILCS 5/5-15001 through 5/5-15022, and other applicable statutory authority, the County has established a Department of Public Works for the purpose of providing sanitary sewer and water supply services to designated areas of the County, including portions of the Northeast Lake Facilities Planning Area established pursuant to the Illinois Water Quality Management Plan, and has prepared plans and programs for providing such services and the related facilities.

3. Pursuant to such plans and programs, the County owns and operate a system of interceptor sanitary sewers and a wastewater treatment plant to transport and treat sewage in limited portions of the Northeast Lake Facilities Planning Area.

4. In addition, pursuant to such plans and programs, the County owns and operates a system of wells or other water sources, treatment and storage facilities, pumping stations, transmission mains, distribution mains, service lines, hydrants, meters, and other necessary facilities to provide water supply services to limited portions of the

Northeast Lake Facilities Planning Area, including the Village.

5. The Village is currently provided with public sanitary sewer or water supply services by the County in certain limited areas and, in other areas, relies entirely on private septic systems and wells.

6. Connection to and continued use of the County's sewer and water systems is the most cost-effective and environmentally protective solution to the long-term sewage treatment and water supply needs of certain areas of the Village.

7. Subject to the terms, conditions, and limitations herein specified, the County and the Village desire to enter into this agreement to permit the Village to obtain sanitary sewer and water supply services for the Gurnee Retail Service Area from the County's sewer and water systems serving the Northeast Lake Facilities Planning Area.

8. The County and the Village enter into this Agreement as well as a companion "Intergovernmental Agreement between the County of Lake and the Village of Gurnee Regarding The Western Area of the Village" to promote and provide for the efficient and economic development and use of costly public infrastructure pursuant to sound and logical public plans so as to avoid wasteful duplication of public facilities.

## **AGREEMENT**

In consideration of the mutual covenants and agreements contained herein, the County and the Village do hereby agree as follows:

## **ARTICLE I**

### **RECITALS**

The foregoing recitals are, by this reference, fully incorporated into and made a part of this Agreement.

**ARTICLE II**  
**DEFINITIONS**

**2.1    Biochemical Oxygen Demand.**

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory test procedures in five days at 20°C.

**2.2    Collection.**

The receipt of Sewage directly from the service connection of an individual Customer and the delivery of such Sewage to the County Northeast Interceptors or to any other provider of Transport or Treatment services.

**2.3    Connection Charges.**

The charges from time-to-time imposed by the County on Customers newly connecting to the County Northeast Sewerage and Waterworks Systems as a condition of such connections.

**2.4    County Northeast Interceptors.**

The system of Sanitary Sewer interceptors tributary to the County Northeast Plant constructed or to be constructed in or near the Village and to be owned and operated by the County to receive Sewage from the Gurnee Retail Sewage Collection Facilities and other Collection facilities in the Northeast Regional Area.

**2.5    County Northeast Plant.**

The treatment plant along Old Mill Creek owned or to be owned and operated by the County, together with any associated facilities and additions to or extensions of such plant or of such facilities.

**2.6    County Northeast Sewerage System.**

The County Northeast Plant, the County Northeast Interceptors, and all other Sanitary Sewers, lift stations, connection facilities, and related facilities, as well as

associated land, easements, and rights-of-way, that the County, from time-to-time, owns or operates for the purpose of, or related to, Transporting and Treating Sewage within the Northeast Regional Area. In addition, upon the County's acceptance of ownership of the Gurnee Retail Sewage Collection Facilities, or any portion of them, such Facilities, or such portion of them, shall become part of the County Northeast Sewerage System.

**2.7 County Northeast Waterworks System.**

All wells or other sources of water and related facilities; all connection points and related facilities; all treatment plants and related facilities; all pumping stations and related facilities; all elevated tanks, standpipes, ground storage reservoirs, and related facilities; all water transmission and distribution mains, service lines, hydrants, and related facilities; and all metering equipment and related facilities, as well as associated lands, easements, and rights-of-way, that the County, from time-to-time, owns or operates for the purpose of, or relating to, providing Water Supply Services in the Gurnee Retail Water Supply Facilities, or any portion of them, such Facilities, or such portion of them, shall become part of the County Northeast Sewerage System.

**2.8 County Sewer and Water Ordinances.**

An ordinance entitled "An Ordinance Regulating the Use of Public and Private Sewer and Drains, Private Sewage Disposal, the Installation and Connection of Building Sewers, and the Discharge of Waters and Wastes into the Public Sewer Systems of the County of Lake in the State of Illinois," enacted by the County on and dated February 9, 1988, together with all such amendments thereto as have been or may be enacted from time-to-time, and any and all other ordinances adopted by the County relating in any way to the County Northeast Sewerage System or to the Collection, Transport, Pretreatment, or Treatment of Sewage in the County and also any and all ordinances adopted by the County relating in anyway to the use, operation, or management of the County Northeast Waterworks System or to the provision of Water Supply Service.

**2.9 Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the Northeast Regional Area that discharges Sewage, either directly or indirectly, into the County Northeast Sewerage System or that accepts water, either directly or indirectly, from the County Northeast Waterworks System.

**2.10 Effective Date.**

The date on which this Agreement shall become effective pursuant to Subsection 10.8A of this Agreement.

**2.11 Force Majeure.**

Strikes; lock-outs; acts of God; inability to obtain labor or materials; changes in applicable law; orders of the United States, State of Illinois, or other civil or military authority; enemy action; civil commotion; fire; unavoidable casualty; or other similar events or circumstances.

**2.12 Gurnee Retail Service Area.**

Such portions of the area outlined and shaded on Exhibit A attached hereto as are, from time-to-time, located within the Northeast Regional Area and within the corporate limits of the Village.

**2.13 Gurnee Retail Sewage Collection Facilities.**

All Sanitary Sewers, lift stations, connection facilities, and related facilities, whether located within or without the Gurnee Retail Service Area, necessary to Collect Sewage from individual Customers located within the Gurnee Retail Service Area and to deliver such Sewage to the County Northeast Interceptors in accordance with the County Sewer and Water Ordinances, all other applicable laws, ordinances, and regulations, and sound engineering practices. The Gurnee Retail Sewage Collection Facilities are to be dedicated to the County and to become part of the County Northeast Sewerage System as provided in Section 3.3 of this Agreement.

**2.14 Gurnee Retail Sewage Collection Facilities Cost.**

The entire actual cost of designing, constructing, installing, and placing in operation the Gurnee Retail Sewage Collection Facilities or a portion of such Facilities necessary or convenient to serve a particular property for which Sanitary Sewer Service is being sought.

**2.15 Gurnee Retail Water Supply Facilities.**

All wells or other sources of water and related facilities; all connection points and related facilities; all treatment plants and related facilities; all pumping stations and related facilities; all elevated tanks, standpipes, ground storage reservoirs, and related facilities; all water transmission and distribution mains, service lines, hydrants, and related facilities; and all metering equipment and related facilities, as well as associated lands, easements, and rights-of-way, whether located within or without the Gurnee Retail Service Area, necessary to secure and deliver a safe, sufficient, and reliable supply of potable water to Customers within the Gurnee Retail Service Area in accordance with the County Sewer and Water Ordinances, all other applicable laws, ordinances, and regulations, and sound engineering practices. The Gurnee Retail Water Supply Facilities are to be dedicated to the County and to become part of the County Northeast Waterworks System as provided in Section 3.3 of this Agreement.

**2.16 Gurnee Retail Water Supply Facilities Cost.**

The entire actual cost of designing, constructing, installing, and placing in operation the Gurnee Retail Water Supply Facilities or a portion of such facilities necessary or convenient to serve a particular property for which Water Supply Service is being sought.

**2.17 Industrial Waste.**

Liquid and water-carried waste discharged, permitted to flow, or escaping from industrial, manufacturing, or production processes, or from the development, recovery, or processing of any natural resource.

2.18 **Infiltration Water.**

Water that enters a Sanitary Sewer from the surrounding soil.

2.19 **Northeast Regional Area.**

The Northeast Lake Facilities Planning Area as established in the Illinois Water Quality Management Plan, as such plan may be amended from time-to-time.

2.20 **Population Equivalent.**

The calculated population that would normally produce 100 gallons of Sanitary Sewage per day containing 0.17 pounds of Biological Oxygen Demand and 0.20 pounds of Suspended Solids or, for Industrial Waste, the estimated population that would produce Sanitary Sewage equal in strength and composition to a unit of volume of Industrial Waste on the basis of the higher of said factors.

2.21 **Pretreated Sewage.**

Sanitary Sewage or Industrial Waste that has been subjected to Pretreatment.

2.22 **Pretreatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character of Sanitary Sewage or Industrial Waste so as to meet the pretreatment standards promulgated under Section 307(b) and 307(c) of the Federal Clean Water Act, or any amendment thereto, as well as any pretreatment standards heretofore or hereafter established in the County Sewer and Water Ordinances.

2.23 **Sanitary Sewage.**

Liquid and water-carried waste discharged from the plumbing fixtures of dwellings and other buildings, but not including such waste discharged from industrial processes.

2.24 **Sanitary Sewer.**

Any sewer that carries Sewage.



2.25 **Sanitary Sewer Service.**

The Collection, Transport, Pretreatment, and Treatment of Sewage, or any combination of one or more of such activities.

2.26 **Sewage.**

Sanitary Sewage, Industrial Waste, and Pretreated Sewage, together with such Infiltration Water as may be permitted under the County Sewer and Water Ordinances.

2.27 **Sewer Connection Charges.**

The charges from time-to-time imposed by the County on Customers newly connecting to the County Northeast Sewerage System as a condition of such connections.

2.28 **Sewer User Fee.**

The standard rate charged by the County for Collection, Transport, and Treatment of Sewage of a specified volume, strength, and composition.

2.29 **SSA Ordinance.**

"An Ordinance Establishing the Northeast Lake FPA Special Service Area" enacted by the County on December 2, 1994, as it may be amended from time to time

2.30 **Suspended Solids.**

Solids that either float on the surface of, or are in suspension in, Sewage or other liquids and that are removable by laboratory filtering.

2.31 **Transport.**

The conveyance of Sewage from the point or points of discharge of the Gurnee Retail Sewage Collection Facilities to the County Northeast Plant or to any other provider of Treatment service.

**2.32 Treatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character or composition of Sanitary Sewage or Industrial Waste not requiring Pretreatment under the standards of the County Sewer and Water Ordinances or the Federal Clean Water Act, or of Pretreated Sewage, so as to meet regulatory requirements.

**2.33 Water Supply Service.**

The delivery of water from the County Northeast Waterworks System, or any other public or private water service, to Customers.

**2.34 Water User Fee.**

The standard rate charged by the County for the distribution and delivery of water of a specified volume.

**ARTICLE III**

**CONSTRUCTION**

**3.1 Gurnee Retail Sewage Collection and Water Supply Facilities.**

A. Village Obligations. The Village shall adopt and approve all ordinances, regulations, and agreements necessary, and take all other action necessary, to require all owners, subdividers, and developers of property in the Gurnee Retail Service Area, in connection with the development of any such property and as a condition to receiving (i) any subdivision, planned development, or other development approval for such property from the Village or (ii) Sanitary Sewer or Water Supply Service for such property from the County Northeast Sewerage and Waterworks Systems, to design, construct, install, and dedicate to the County all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities as necessary to serve such property in accordance with this Agreement, the County Sewer and Water Ordinances, all other requirements of law, and sound engineering practices. In fulfilling its responsibilities hereunder, the

Village shall, at a minimum, adopt and approve ordinances, regulations, and agreements requiring the owner, subdivider or developer of any property in the Gurnee Retail Service Area, as a condition to receiving (i) any subdivision, planned development, or other development approval for such property from the Village or (ii) Sanitary Sewer or Water Supply Service for such property from the County Northeast Sewerage and Waterworks Systems, to undertake, or cause to be undertaken, at least the following work relating to the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property:

1. Obtain engineering services, from a firm acceptable to the County, for the design, plans and specifications, and construction of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property;
2. Obtain and convey to the County, on such forms as may be acceptable to the County, all easements, rights-of-way, licenses, and other property rights that are necessary or convenient to construct, install, operate, and maintain the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property, including the preparation of appropriate surveys, agreements, and other relevant documents;
3. Negotiate, prepare, and enter into, on such forms as may be acceptable to the County and with firms acceptable to the County, all contracts necessary in connection with the construction and installation of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property;
4. Secure, on behalf of itself, the County, the Village, and all other necessary parties, all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property;
5. Submit to the County, for the County's review and approval, all preliminary and final engineering plans, drawings, and specifications, all contract documents, and all permit applications for all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property;
6. Convey, or caused to be conveyed, to the County all right, title, and interest in all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property as and when such Facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and have been approved by the County as being in full compliance

with this Agreement, all applicable contracts, plans, and specifications, the County Sewer and Water Ordinances, and all other requirements of law; and

7. Perform all other activities necessary or convenient in connection with the design, construction, installation, and placing into service of all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property, including associated administrative activities.

Such ordinances, regulations, and agreements shall provide for and require the orderly expansion of the County Northeast Sewerage System and the County Northeast Waterworks System in accordance with the County Sewer and Water Ordinances, all other requirements of law, and sound engineering practices and shall, when necessary for such purpose, require appropriate oversizing of facilities and may, in connection with such oversizing, provide rights of recapture to the extent permitted by Illinois law. Such ordinances, regulations, and agreements shall further provide that the County shall have the following rights with respect to all work required pursuant to this Subsection 3.1A:

1. The right to review, comment on, and approve all designs, all plans and specifications, all contract documents, and all easements, rights-of-way, licenses and other property rights required to be prepared or supplied pursuant to this Subsection 3.1A;
2. The right to review, comment on, and approve all permit applications required to be filed pursuant to this Subsection 3.1A; and
3. The right to conduct such inspections of the work required to be performed pursuant to this Subsection 3.1A as the County may deem necessary or appropriate to protect its interests.

B. County Obligations. Subject to the conditions and limitations set forth in Article V and to the other terms and conditions of this Agreement and subject, further, to all of its costs and expenses associated therewith being reimbursed by, or on behalf of, the owner, subdivider, or developer obligated to perform the work required pursuant to Subsection 3.1A above, the County shall have the following obligations with respect such work:

1. The obligation to approve, when completed in accordance with this Agreement, the County Sewer and Water Ordinances, all other requirements of law, and sound engineering practices, all designs, all plans and specifications, all contract documents, and all easements, rights-of-way, licenses and other property rights required to be prepared or supplied pursuant to Subsection 3.1A above;
2. The obligation to execute, when completed in accordance with this Agreement, the County Sewer and Water Ordinances, all other requirements of law, and sound engineering practices, all permit applications required to be filed pursuant to Subsection 3.1A above, but only when the signature of the County is required by the permitting agency; and
3. The obligation to accept ownership of the Gurnee Retail Sewage Collection and Water Supply Facilities, or portions of them, when, but only when, satisfied, in its sole and absolute discretion, that (a) the Gurnee Retail Sewage Collection and Water Supply Facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and are in full compliance with this Agreement, all plans and specifications, all contract documents, the County Sewer and Water Ordinances, all other requirements of law, and sound engineering practices and (b) all costs and expenses associated with the Gurnee Retail Sewage Collection and Water Supply Facilities, or the portion of them to be accepted by the County, have been paid in full.

### **3.2 Payment and Guarantee of Costs.**

The Village shall adopt and approve all ordinances, regulations, and agreements necessary, and take all other action necessary, to require the owner, subdivider, or developer of any property in the Gurnee Retail Service Area, in connection with the development of such property and as a condition to receiving (i) any subdivision, planned development, or other development approval for such property from the Village or (ii) Sanitary Sewer or Water Supply Service for such property from the County Northeast Sewerage and Waterworks Systems, to pay, or cause to be paid, the full Gurnee Retail Sewage Collection Facilities Cost and the full Gurnee Retail Water Supply Facilities Cost for all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property. In addition, the Village shall, as a condition to granting any subdivision, planned development, or other development approval for any property within the Gurnee Retail Service Area seeking permission to connect to the County

Northeast Sewerage or Waterworks Systems, require the owner, subdivider, or developer seeking such approval to deposit with the Village or with the County a letter of credit, in a form satisfactory to the County and with a bank approved by the County, in the amount of 130 percent of the aforesaid Gurnee Retail Sewage Collection and Water Supply Facilities Costs, which letter of credit shall be so conditioned, to the satisfaction of the County, as to ensure completion of those portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary or convenient to serve such property.

## **ARTICLE IV**

### **SANITARY SEWER AND WATER SUPPLY SERVICE**

#### **4.1 County Obligations.**

##### **A. Operation and Maintenance.**

After the Gurnee Retail Sewage Collection and Water Supply Facilities, or any portion of them, have been conveyed to, and accepted and placed in service by, the County pursuant to Section 3.1 of this Agreement, the County shall, subject to the conditions precedent and limitations set forth in Article V of this Agreement, and to the other terms and conditions of this Agreement, use its best efforts to operate and maintain the County Northeast Sewerage and Waterworks Systems, or the portions of such Systems that have been placed in service pursuant to Article III of this Agreement, in accordance with its customary practices and good engineering practices. Use of the County Northeast Sewerage and Waterworks Systems shall be governed by the County Sewer and Water Ordinances, the SSA Ordinance, and this Agreement.

#### **4.2 Village Obligations.**

Except as provided in Section 4.3 of this Agreement, the Village shall not, at any time during the term of this Agreement, (i) offer, authorize, or permit any Sanitary Sewer or Water Supply Service within the Gurnee Retail Service Area other than such Service as is delivered by the County by and through the County Northeast Sewerage

System and the County Northeast Waterworks System; (ii) construct, or cause, permit, or consent to the construction of, any Sanitary Sewers or Treatment facilities (other than the County Northeast Sewerage System) or any facilities designed or intended to provide Water Supply Service (other than the County Northeast Waterworks System) within the Gurnee Retail Service Area; (iii) deliver Sewage from the Gurnee Retail Service Area to any Sanitary Sewer or Treatment facility other than the County Northeast Sewerage System; or (iv) accept Water Supply Service from any waterworks system other than the County Northeast Waterworks System without, in each such case, the prior written consent of the County.

**4.3 Alternative Sanitary Sewer and Water Supply Services.**

A. Limited Right to Use Other Facilities. If, at any time prior to the time the Village is delivering to the County Northeast Sewerage System the maximum flow permitted under Clauses 5.3(1) and 5.3(2) of this Agreement, the County is unable or unwilling to provide Sanitary Sewer Service necessary for all Sewage from the Gurnee Retail Service Area in accordance with this Agreement, the Village may, upon proper notice as provided in Subsection B of this Section 4.3, and without the consent of the County, make alternate arrangements for Treatment of such Sewage from the Gurnee Retail Service Area that the County is unable or unwilling to provide.

B. Required Notice. Any notice required pursuant to Subsection 4.3A of this Agreement shall be in writing and shall be delivered to the County not less than 90 days before the Village enters into any contract or other arrangement for Treatment of Sewage from the Gurnee Retail Service Area by any service provider other than the County. Such notice shall specify the amount of Sewage that the Village intends to deliver to any other service provider and the basis for the Village's conclusion that the County will not or cannot provide Sanitary Sewer Service for such Sewage. If, within 90 days after such notice is delivered to the County, the County agrees in writing to provide the required Sanitary Sewer Service, the Village shall be required to take such Service

from the County pursuant to this Agreement rather than from any other service provider.

C. Septic Systems. No septic system serving not more than one detached single family dwelling on a lot of not less than 40,000 square feet in area shall be considered to be a Treatment facility for purposes of this Section.

4.4 **Other Agreements and Laws.**

Nothing in this Agreement shall be construed or interpreted as a waiver by the County of its rights under any other agreement or law governing the County's right to provide exclusive Sanitary Sewer or Water Supply Services within any portion of the County, including the Gurnee Retail Service Area.

**ARTICLE V**

**CONDITIONS OF, AND LIMITATIONS ON, COUNTY PERFORMANCE**

5.1 **Conditions Beyond County's Control.**

The County shall not be responsible for any failure to perform the undertakings, obligations, and commitments assumed by it pursuant to this Agreement caused by a Force Majeure.

5.2 **Conditions Precedent to County Performance.**

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Gurnee Retail Area to receive Sanitary Sewer and Water Supply Services from the County pursuant to this Agreement, and the County's obligation to provide Sanitary Sewer and Water Supply Services within the Gurnee Retail Service Area, shall be subject to all of the following conditions precedent having first been satisfied:

1. Receipt by the County, at no expense to the County, of all necessary governmental approvals to operate all of the components of the County Northeast Sewerage System and the County Northeast Waterworks System as may be necessary to provide Sanitary Sewer and Water Supply Service to the Gurnee Retail Service Area, or the portion of such Service Area for which such Services



are being sought, pursuant to this Agreement.

2. Receipt by the County, at no expense to the County and by documents reasonably satisfactory to the County, of any and all easements, licenses, and permits, whether across private property, Village property, or other public property, including public streets, that the County determines in its sole discretion are necessary for the construction, installation, operation, maintenance, repair, removal, or replacement of any of the components of the County Northeast Sewerage System and the County Northeast Waterworks System, or the portions of such Systems to be placed in service, and any facilities related thereto to be owned or maintained by the County.

3. Construction and dedication to the County, at no expense to the County, of all portions of the Gurnee Retail Sewage Collection and Water Supply Facilities necessary to provide the Sanitary Sewer or Water Supply Services being sought.

4. Completion of all work required pursuant to Clauses 5.2(3) above:

(a) pursuant to applications, designs, plans, specifications, and contract documents reviewed and approved by the County, which approval shall not be unreasonably delayed or withheld;

(b) pursuant to permits issued by the County;

(c) in accordance with all applicable laws and regulations, including specifically, but without limitation, the County Sewer and Water Ordinances; provided, however, that whenever the Village standards for any portion of the Gurnee Retail Sewage Collection and Water Supply Facilities are, in the opinion of the County, more stringent than the County standards, the Village standards shall apply;

(d) subject to inspection by the County to ensure compliance with the requirements of this Section 5.2 and with the other terms and conditions of this Agreement and the County Sewer and Water Ordinances; and

(e) in a manner acceptable to the County in accordance with sound engineering practices.

5. The ability of the County to provide Sanitary Sewer and Water Supply Services as required by this Agreement without violating any applicable laws or regulations.

6. All other terms and conditions of this Agreement and the SSA Ordinance.

### **5.3 Limitations on County Service.**

Notwithstanding any other provision of this Agreement, the right of the

Village or any Customer located within the Gurnee Retail Service Area to receive Sanitary Sewer and Water Supply Service from the County, and the County's obligation to provide Sanitary Sewer and Water Supply Services within the Gurnee Retail Service Area, shall be subject to the following limitations and conditions:

1. The sanitary sewer and water services to the Gurnee Retail Service Area shall be limited to non-residential uses only.

2. The points of connection between the Gurnee Retail Sewage Collection Facilities and the County Northeast Interceptors and between the Gurnee Retail Water Supply Facilities and any other portion of the County Northeast Waterworks System shall, unless otherwise authorized in writing by the County Administrator, be made within the limits of the Gurnee Retail Service Area, but the precise number, size, and location of such connections shall be determined by the County after consultation with the Village in accordance with sound engineering practices.

3. The Sewer and Water Services to be provided by the County pursuant to this Agreement shall be on a first come-first serve basis and within the limits of available capacity.

4. The Sanitary Sewer and Water Supply Services to be provided by the County pursuant to this Agreement shall be subject to the County Water and Sewer Ordinances and all other applicable laws, ordinances, rules, and regulations, including any Pretreatment standards.

5. The Sanitary Sewer and Water Supply Services to be provided by the County pursuant to this Agreement shall be subject to all other terms and conditions of this Agreement and the SSA Ordinance.

## **ARTICLE VI**

### **COUNTY CHARGES AND FEES**

#### **6.1 Service Conditioned on Payment.**

Notwithstanding any other provision of this Agreement, the County shall have no obligation to provide Sanitary Sewer or Water Supply Service to any Customer located within the Gurnee Retail Service Area unless all County Connection Charges and Sewer and Water User Fees required by the County for such Services have been paid.

6.2 **Connection Charges.**

A. **Sanitary Sewer Connection Charges.** Every Customer located within the Gurnee Retail Service Area connecting, either directly or indirectly, to the County Northeast Sewerage System shall pay to the County a Connection Charge at the same rate as the County from time-to-time charges for similar Sanitary Sewer Services provided by the County through the County Northeast Sewerage System. The County shall be solely responsible for setting, billing, and collecting all Sanitary Sewer Connection Charges.

B. **Water Supply Connection Charges.** Every Customer located within the Gurnee Retail Service Area connecting, either directly or indirectly, to the County Northeast Waterworks System shall pay to the County a Connection Charge at the same rate as the County from time-to-time charges for similar Water Supply Services provided by the County through the County Northeast Waterworks System. The County shall be solely responsible for setting, billing and collecting all Water Supply Connection Charges.

6.3 **Sewer and Water User Fees.**

A. **Sewer User Fees.** The County shall issue bills for and shall be entitled to payment of, and every Customer located within the Gurnee Retail Service Area shall pay to the County, Sewer User Fees based upon the actual volume, strength, and composition of Sewage delivered to the County Northeast Sewerage System from such Customer. The County shall be solely responsible for setting, billing, and collecting Sewer User Fees.

B. **Water User Fees.** The County shall issue bills for, and shall be entitled to payment of, Water User Fees based upon the actual volume of water delivered from the County Northeast Waterworks System to each Customer located within the Gurnee Retail Service Area. The County shall be solely responsible for setting, billing, and collecting Sewer User Fees.

C. Level of Fees. Sewer and Water User Fees shall be uniform for all Customers of the County Northeast Sewerage System and the County Northeast Waterworks System receiving similar service. Such Sewer and Water User Fees shall at all times be set at levels designed to assure that the County revenues from such Fees will always be sufficient, when considered in light of any other monies legally available for and applied to such purposes, (i) to provide adequate and proper levels of service; (ii) to pay the County's costs of maintenance, replacement, and operation; (iii) to pay the principal of, and premiums and interest upon, bonds secured, in whole or in part, by the revenues of the County Northeast Sewerage System or the County Northeast Waterworks System; (iv) to provide a reasonable depreciation fund; and (v) to provide such other reserves and sinking funds as may be deemed necessary or desirable by the County for the payment of such bonds and for the replacement, extension, or improvement of the County Northeast Sewerage System and the County Northeast Waterworks System.

6.4 Metering.

The County shall have the right to establish and enforce reasonable requirements for all Customers located within the Gurnee Retail Service Area for the installation, calibration, inspection, maintenance, repair, and replacement of meters to measure each Customer's water consumption for billing and other purposes. Nothing in this Section 6.4 shall be deemed to limit the County's ability to estimate any Customer's water consumption for purposes of establishing Sewer or Water User Fees.

## ARTICLE VII

### **OWNERSHIP AND MAINTENANCE**

The County shall be the sole owner of, and shall have the duty to maintain, the County Northeast Plant and the County Northeast Interceptors. After the Gurnee Retail Sewage Collection and Water Supply Facilities, or any portion of such Facilities, have been conveyed to, and accepted and placed in service by, the County pursuant to Article III of this Agreement, the County shall be the sole owner of, and shall have the duty to maintain, the Gurnee Retail Sewage Collection and Water Supply Facilities or such portion thereof, as part of, respectively, the County Northeast Sewerage System and the County Northeast Waterworks System. Nothing in this Agreement shall be construed to give the Village, or any other person or entity, except the County, any ownership or other interest in any part of either the County Northeast Sewerage System or the County Northeast Waterworks System.

## ARTICLE VIII

### **FPA AMENDMENTS**

#### **8.1 Joint Action.**

In order to promote sound public sewer planning and the efficient and economical use of County and Village facilities being installed and maintained pursuant to this Agreement:

1. The County shall file, and the Village shall support, any application that may be required to amend the Illinois Water Quality Management Plan with respect to the development of the County Northeast Sewerage System; and
2. Neither the Village, unless authorized pursuant to Section 4.3 of this Agreement, nor the County shall file or support any application to amend, and the County and the Village shall undertake joint and cooperative action to oppose and object to any petition to amend, the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois (i) so as to change any of the boundaries of the Northeast Regional Area with respect to any property in the Gurnee Retail Service Area in any manner that is inconsistent with

this Agreement; or (ii) so as to prevent the Village and the County from serving the Gurnee Retail Service Area, as it exists on the Effective Date of this Agreement and as it may be modified pursuant to this Agreement, in the manner provided by this Agreement.

For purposes of this Section, joint action shall include, without limitation, filing written objections, providing staff support, and retaining such attorneys and consultants as the parties mutually agree are necessary with respect to such objections.

**8.2     Exception.**

Upon the express written agreement of the County and the Village, the parties may choose not to oppose or object to a specific petition to amend the boundaries of the Northeast Regional Area without otherwise affecting their general obligation to oppose such petitions.

**ARTICLE IX**

**OTHER CONTRACTS AND SERVICE**

**9.1     County Rights.**             The County shall have the right to contract with other persons, natural or corporate, private or public, to perform services similar to those to be performed under this Agreement; provided, however, that nothing in this Agreement shall be construed to require the County to provide Sanitary Sewer or Water Supply Service to any area of the Village other than the Gurnee Retail Service Area.

9.2 **Village Acknowledgements.** The Village acknowledges and agrees that: (i) the County does not act or operate as a public or private utility; (ii) the County does not act or operate in a business or proprietary capacity in providing Sanitary Sewer and Water Supply Services to the Gurnee Retail Service Area; (iii) the County does not by this Agreement, or its performance pursuant to this Agreement, hold itself out as offering to, and is under no obligation to, provide Sanitary Sewer or Water Supply Services to any property other than the Gurnee Retail Service Area; (iv) the County is under no obligation to provide Sanitary Sewer or Water Supply Service to any property or area other than the Gurnee Retail Service Area; and (v) the County's sole obligation to provide Sanitary Sewer and Water Supply Service to Customers located within the Gurnee Retail Service Area is the contractual obligation set forth in this Agreement.

9.3 **Other County Service.**

Nothing in this Agreement shall be construed or interpreted to prevent or limit the right of the County, or to require the consent of the Village, to provide Sanitary Sewer and Water Supply Services to parties other than the Village on such terms and conditions as the County may, in its sole discretion, determine to be appropriate, including, without limitation, Sanitary Sewer Service and Water Supply Service utilizing the County Northeast Sewerage System and the County Northeast Waterworks System.

9.4 **No Third Party Beneficiaries.**

Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

9.5 **Other County-Village Agreements.**

Nothing in this Agreement shall be deemed to alter, amend, or otherwise affect the agreement the County has with the Village for wholesale sanitary sewerage services pursuant to a "Restated and Amended Agreement for Sewage Disposal" entered into by and between the County and the Village concurrently with this Agreement, and as from time-to-time may be amended.

## ARTICLE X

### **LEGAL RELATIONSHIPS AND REQUIREMENTS**

#### **10.1 Entire Agreement.**

There are no representations, covenants, promises, or obligations not contained in this Agreement, or in any Exhibits attached hereto and incorporated herein, that form any part of this Agreement or upon which any of the parties is relying in entering into this Agreement.

#### **10.2 Exhibit.**

Exhibit A, the "Gurnee Retail Service Area Map," attached to this Agreement is, by this reference, incorporated into and made a part of this Agreement.

#### **10.3 Amendments.**

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized consent of the County and the Village.

#### **10.4 Waivers.**

No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provisions of this Agreement.



**10.5 Interpretation and Severability.**

It is the intent of the County and the Village that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, including the exhibits hereto, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.

**10.6 Regulatory Bodies.**

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section 10.6 shall not be construed as waiving the right of any party to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement. The County reserves the right to adopt ordinances, rules, and regulations governing the design, installation, and use of the County Northeast Sewerage System and the County Northeast Waterworks System.

**10.7 Successors; Assignment.**

This Agreement shall be binding on, and shall inure to the benefit of the successors and permitted assigns of the County and the Village.

The Village shall not assign this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written consent of the County, which consent may be withheld in the sole and unfettered discretion of the County. The County may, upon notice to the Village, assign this Agreement, in whole or in part, or any or all of the County's rights or obligations under this Agreement, without the consent of the Village.

10.8 **Effective Date and Term.**

A. **Effective Date.** This Agreement shall take effect as of the date first above written when executed by the duly authorized representatives of the County and the Village.

B. **Term.** This Agreement shall be in full force and effect for a period of 20 years from and after its Effective Date.

10.9 **Notices.**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the County:

County of Lake  
18 North County Street  
Waukegan, Illinois 60085  
Attn: County Administrator

and

Lake County Department of Public Works  
650 Winchester Road  
Libertyville, Illinois 60048  
Attn: Director of Public Works

For notices and communications to the Village:

Village of Gurnee  
325 N. O'Plaine Road  
Gurnee, Illinois 60031  
Attention: Village Administrator

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the addressees or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

**10.10 Execution in Counterparts.**

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

**10.11 Enforcement.**

A. Remedies. The parties hereto may in law or in equity enforce or compel the performance of this Agreement, and shall otherwise have all remedies provided by applicable United States of America, State of Illinois, and local laws, ordinances, rules, and regulations, except that neither the Village nor the County shall seek or recover monetary damages against the County or the Village or any of its officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

B. Attorney Fees. Notwithstanding the aforesaid limitation on money damages, the prevailing party in any judicial or administrative proceeding brought for enforcement or breach of any provision of this Agreement shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial or administrative proceeding.

IN WITNESS WHEREOF, the County and the Village have, by their duly authorized officers, set their hands and affixed their seals on the date first above written.

**COUNTY OF LAKE**

BY: \_\_\_\_\_

Suzi Schmidt  
Chairman, Lake County Board

ATTEST:

\_\_\_\_\_  
Willard Helander  
County Clerk

(SEAL)

**VILLAGE OF GURNEE**

BY: \_\_\_\_\_

President

ATTEST:

\_\_\_\_\_  
Village Clerk

# EXHIBIT A



Department of Public Works  
650 West Winchester Road  
Libertyville, Illinois 60048  
(847) 377-7500  
(847) 377-7173 FAX

## EXHIBIT A GURNEE RETAIL SERVICE AREA MAP

0 Feet 600



SEPTEMBER 2007

**EXHIBIT 4 (IGA)**

**RESTATED VILLAGE OF GURNEE/COUNTY WHOLESALE SEWER AGREEMENT**

RESTATED VILLAGE OF GURNEE WHOLESALE SEWER AGREEMENT

Entered Into By and Between  
The County of Lake, Illinois  
and

The Village of Gurnee, Illinois

As of

\_\_\_\_\_, 200\_\_

**RESTATED AND AMENDED WHOLESALE AGREEMENT  
FOR SEWAGE DISPOSAL**

THIS AGREEMENT made and executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between the VILLAGE OF GURNEE, an Illinois municipal corporation located in Lake County, Illinois, hereinafter referred to as the "*Village*", and the COUNTY OF LAKE, Illinois, hereinafter referred to as the "*County*,"

**RECITALS:**

1. The public health, welfare, and safety of the residents of the Village and the residents of the County require the development of coordinated and adequate systems for the collection and treatment of sewage so as to eliminate pollution of lakes and streams.

2. The County has established a Department of Public Works pursuant to an Act of the General Assembly of the State of Illinois entitled "An Act in Relation to Water Supply, Drainage, Sewage, Pollution, and Flood Control in Certain Counties", as amended, for the purpose of performing the function of sewage disposal and has prepared a comprehensive plan for the disposal of sewage from areas of the County, including portions of the Northeast Central Lake Facilities Planning Area established pursuant to the Illinois Water Quality Management Plan, and has prepared plans and programs for providing such service and the related facilities.

3. Pursuant to such plans and programs, the County has constructed, owns, and operates a system of interceptor sanitary sewers in the aforementioned facilities planning area to provide sanitary sewer service. The County has also entered into an agreement with the North Shore Sanitary District ("*NSSD*") whereby the NSSD will perform the function of sewage treatment for the County in the Northeast Central Regional Area subject to certain fees and conditions as outlined in the agreement between the NSSD and the County, which agreement and any amendments thereto are, by this reference, incorporated herein and made a part hereof as if fully set forth.

4. The County and the Village have previously entered into an Agreement for Sewage Disposal, dated November 14 1977 (the "*Prior Agreement*"), which Agreement was amended from time-to-time, most recently as a Third Amendment on January 8, 2001 (the Agreement, and its various amendments to and through the Third Amendment shall hereinafter be collectively referred to in this Amendment as the "*Prior Sewage Agreement*").

5. In accordance with the Prior Sewage Agreement, the Village's sewer system is already delivering sewage from Village customers to the County's interceptor for the Northeast Central Regional Area.

6. The Prior Sewage Agreement has expired, and the Village seeks to develop long-range plans for the future development and redevelopment of its territory, which plans include the provision of sanitary sewer services.



7. In response to the request of the Village, and in connection with the "Intergovernmental Agreement Between the Village of Gurnee and the County of Lake Regarding the Western Area of the Village" that the Village and the County have entered into on the same date as this Agreement (the "*Intergovernmental Gurnee/County Agreement*"), the County and the Village desire to enter this restated and amended agreement for wholesale sewage disposal that will permit the Village, subject to specified terms, conditions, and limitations, to deliver sewage to the County's sanitary sewer system in the Northeast Central Regional Area, which restated and amended agreement would supersede the Prior Sewage Agreement.

## **AGREEMENT**

In consideration of the mutual covenants and agreements contained herein, the County and the Village do hereby agree as follows:

### **ARTICLE I**

#### **RECITALS**

The foregoing recitals are, by this reference, fully incorporated into and made a part of this Agreement.

### **ARTICLE II**

#### **DEFINITIONS**

When used in this Agreement, and notwithstanding any other meanings, understandings, or definitions ascribed by common usage or otherwise for any other purpose, the following terms shall have the meanings herein ascribed to them and no other:

2.1 **Biochemical Oxygen Demand.**

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory test procedures in five days at 20°C.

2.2 **Collection.**

The receipt of Sewage directly from the service connection of an individual Customer and the delivery of such Sewage to the County Interceptors or to any other provider of Transport or Treatment services.

2.3 **Comprehensive Plan.**

The Regional Wastewater Plan of the County of Lake approved by resolution of the County dated December 17, 1968, and amended from time-to-time thereafter.

#### 2.4 **Connection Charges.**

The charges from time-to-time imposed by the County on Customers newly connecting to the County Sewerage System as a condition of such connections.

#### 2.5 **County Interceptors.**

The system of Sanitary Sewer interceptors, and related facilities, tributary to the NSSD Treatment Plant, as generally described in the Comprehensive Plan, constructed within the NECFPA Regional Area that the County owns and operates pursuant to the Comprehensive Plan, together with such extensions of, and additions to, such system of interceptors and facilities as may be owned and operated by the County in the NECFPA Regional Area.

#### 2.6 **County Interceptor Improvement Report.**

That certain "Engineering Report for Northeast Central Interceptor System Improvements" prepared for the County's Public Works Department by Rezek, Henry, Meisenheimer and Gende, Inc. (Project No. 20302060) dated March 2003, as revised.

#### 2.7 **County Sewerage System.**

The County Interceptors, and all other Sanitary Sewers, lift stations, connection facilities, and related facilities, as well as associated land, easements, and rights-of-way, that the County, from time-to-time, owns or operates for the purpose of, or related to, Transporting Sewage within the NECFPA Regional Area to the NSSD Treatment Plant or such other treatment plant as the County may utilize.

#### 2.8 **County Sewer Ordinances.**

An ordinance entitled "An Ordinance Regulating the Use of Public and Private Sewer and Drains, Private Sewage Disposal, the Installation and Connection of Building Sewers, and the Discharge of Waters and Wastes into the Public Sewer Systems of the County of Lake in the State of Illinois," enacted by the County on and dated February 9, 1988, together with all such amendments thereto as have been or may be enacted from time-to-time, and any and all other ordinances adopted or rules promulgated by the County relating in any way to the County Sewerage System or to the Collection, Transport, Pretreatment, or Treatment of Sewage in the County.

#### 2.9 **Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the Village of Gurnee Wholesale Sewer Service Area and within the corporate limits of the Village that discharges Sewage, either directly or indirectly, into the County Sewerage System.

2.10 **Effective Date.**

The date on which this Agreement shall become effective pursuant to Subsection 10.8 of this Agreement.

2.11 **Force Majeure.**

Orders of the United States, State of Illinois, or other civil or military authority, changes in applicable law, strikes, lock-outs, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, unavoidable casualty, or other similar events or circumstances.

2.12 **Industrial Waste.**

Liquid and water-carried waste discharged, permitted to flow, or escaping from industrial, manufacturing, or production processes, or from the development, recovery, or processing of any natural resource.

2.13 **Infiltration Water.**

Water that enters a Sanitary Sewer from the surrounding soil.

2.14 **NECFPA Regional Area.**

The Northeast Central Lake Facilities Planning Area as established in the Illinois Water Quality Management Plan, as such plan may be amended from time-to-time.

2.15 **NSSD Agreement.**

That certain agreement between the County and the NSSD dated March 21, 1994, and amendments thereto, providing *inter alia* for the treatment and disposal of sewage delivered from the County Interceptor to the NSSD Treatment Plant.

2.16 **NSSD Treatment Plant.**

The treatment plant, and related facilities, that the NSSD owns and operates in the along the Des Plaines River in Gurnee, Illinois to which the County Interceptors are tributary, pursuant to the Comprehensive Plan, together with extensions of, and additions to, such plant and facilities.

2.17 **Population Equivalent.**

The calculated population that would normally produce 100 gallons of Sanitary Sewage per day containing 0.17 pounds of Biological Oxygen Demand and 0.20 pounds of Suspended Solids.

2.18 **Pretreated Sewage.**

Sanitary Sewage or Industrial Waste that has been subjected to Pretreatment.

2.19 **Pretreatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character of Sanitary Sewage or Industrial Waste so as to meet the pretreatment standards promulgated under Section 307(b) and 307(c) of the Federal Clean Water Act, or any amendment thereto, as well as any pretreatment standards heretofore or hereafter established in the County Sewer Ordinances.

2.20 **Sanitary Sewage.**

Liquid and water-carried waste discharged from the plumbing fixtures of dwellings and other buildings, but not including such waste discharged from any industrial process.

2.21 **Sanitary Sewer.**

Any sewer that carries Sewage.

2.22 **Sanitary Sewer Service.**

The Transport and Treatment of Sewage, or any combination of one or more of such activities.

2.23 **Sewage.**

Sanitary Sewage, together with such Infiltration Water as may be permitted pursuant to the County Sewer Ordinances.

2.24 **Sewer User Fee.**

The standard rate charged by the County in the County Sewerage System for Collection, Transport, and Treatment of Sewage of a specified volume, strength, and composition.

2.25 **Suspended Solids.**

Solids that either float on the surface of, or are in suspension in, Sewage or other liquids and that are removable by laboratory filtering.

2.26 **Transport.**

The conveyance of Sewage from the point or points of discharge of the Village Sewage Collection System to the NSSD Treatment Plant or to any other provider of Treatment service.

2.27 **Treatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character or composition of Sanitary Sewage under the standards of the County Sewer Ordinances or the Federal Clean Water Act.

2.28 **Village of Gurnee Wholesale Sewer Service Area.**

Those areas located within the area depicted on Exhibit A to this Agreement that are either currently within the corporate limits of the Village or subsequently annexed to the Village.

2.29 **Village Sewage Collection System.**

All Sanitary Sewers, lift stations, connection facilities, and related facilities, as well as associated lands, easements, and rights-of-way, whether located within or without the Village of Gurnee Wholesale Sewer Service Area, presently existing or to be constructed in the future, that are owned, operated, or maintained by the Village and are necessary to Collect Sewage from individual Customers located within the Village of Gurnee Wholesale Sewer Service Area and to deliver such Sewage to the County Interceptors in accordance with the County Sewer Ordinances, all other applicable laws, ordinances, and regulations, and sound engineering practices.

2.30 **Village of Gurnee West Sewer Service Area.**

Those portions of the Village of Gurnee Wholesale Sewer Service Area located within the area depicted on Exhibit B attached to this Agreement as the "Village of Gurnee West Sewer Service Area" that are either currently within the corporate limits of the Village or subsequently annexed to the Village.

**ARTICLE III**

**SANITARY SEWER SERVICE**

3.1 **County Obligations.**

The County shall, subject to the conditions precedent and limitations set forth in Article V of this Agreement, and to the other terms and conditions of this Agreement, use its best efforts to operate and maintain the County Sewerage System in accordance with its customary practices and sound engineering practices. Use of the County Sewerage System shall be governed by the County Sewer Ordinances and this Agreement.

### 3.2 **Village Obligations.**

Except as provided in Section 3.3 of this Agreement, the Village shall not, at any time during the term of this Agreement, (i) offer, authorize, or permit any Sanitary Sewer Service within the Village of Gurnee Wholesale Sewer Service Area other than such Service as is delivered by the County by and through the County Sewerage System; (ii) construct, or cause, permit, or consent to the construction of, any Sanitary Sewers or Treatment facilities (other than the County Sewerage System and the Village Sewage Collection System) within the Village of Gurnee Wholesale Sewer Service Area; or (iii) deliver Sewage from properties within the Village of Gurnee Wholesale Sewer Service Area to any Interceptor Sewer or Treatment facility other than the County Sewerage System without, in each such case, the prior written consent of the County.

### 3.3 **Alternative Sanitary Sewer Services.**

A. **Limited Right to Use Other Facilities.** If, at any time after the Effective Date of this Agreement, the County is unable or unwilling to provide Sanitary Sewer Service as required by this Agreement for all Sewage from the Village of Gurnee Wholesale Sewer Service Area, the Village may, upon proper notice as provided in Subsection B of this Section 3.3, and without the consent of the County, make alternate arrangements for Sanitary Sewer Service with respect to such Sewage that the County is unable or unwilling to Transport or Treat.

B. **Required Notice.** Any notice required pursuant to Subsection 3.3A of this Agreement shall be in writing and shall be delivered to the County not less than 90 days before the Village enters into any agreement or other arrangement for any Sanitary Sewer Service with respect to Sewage from the Village of Gurnee Wholesale Sewer Service Area by any provider of Sanitary Sewer Service other than the County. Such notice shall specify the amount of Sewage that the Village intends to deliver to any other service provider and the basis for the Village's conclusion that the County cannot or will not provide Sanitary Sewer Service with respect to such Sewage. If, within 90 days after such notice is delivered to the County, the County agrees in writing to provide the required Sanitary Sewer Service, the Village shall be required to take such Service from the County pursuant to this Agreement rather than from any other service provider.

C. **Septic Systems.** No septic system serving not more than one detached single family dwelling on a lot of not less than 40,000 square feet in area shall be considered to be a Treatment facility for purposes of this Section.

### 3.4 **Other Agreements and Laws.**

Nothing in this Agreement shall be construed or interpreted as a waiver by the County of its rights under any other agreement or law governing the County's right to provide exclusive Sanitary Sewer Service within any portion of the County; provided, however, that the County shall not provide Sanitary Sewer Service within the Village of Gurnee Wholesale Sewer Service Area except in accordance with the terms and conditions of this Agreement.

## ARTICLE IV

### VILLAGE SEWAGE COLLECTION SYSTEM

#### 4.1 Acknowledgment of Existing Village Sewage Collection System.

The parties acknowledge that the Village currently owns, operates, and maintains the Village Sewage Collection System, which system is tributary to the County Sewerage System. The Village shall be permitted to continue to Collect Sewage from Customers within the Village of Gurnee Wholesale Sewer Service Area and to deliver such Sewage to the County Sewerage System, subject to and in accordance with the County Sewer Ordinances.

#### 4.2 Extensions to Village Sewage Collection System.

A. Permitted Extensions and Enlargements. The Village shall be permitted to extend, enlarge, or otherwise modify or improve the Village Sewage Collection System in any manner that the Village determines is necessary and appropriate in order to serve Customers within the Village of Gurnee Wholesale Sewer Service Area; provided that any such extension, enlargement, modification, or improvement shall be undertaken in accordance with the terms of this Agreement.

B. Standards for Extensions or Enlargements. In the event that the Village elects to extend, enlarge, or otherwise modify or improve the Village Sewage Collection System, either directly or by owners, subdividers, or developers of any lot, tract, or parcel within the Village of Gurnee Wholesale Sewer Service Area in connection with the development of any such lot, tract, or parcel, the Village shall require any such extension, enlargement, modification, or improvement, to be designed, constructed, and installed in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices. In fulfilling its responsibilities hereunder, the Village shall, at a minimum, undertake or cause to be undertaken, at no cost to the County, the following:

1. Obtain engineering services, from a firm experienced in the design of public sewerage systems, for the design, plans and specifications, and construction of any portion of the Village Sewage Collection System;
2. Obtain all easements, rights-of-way, licenses, and other property rights that are necessary or convenient to construct, install, operate, and maintain any portion of the Village Sewage Collection System, including the preparation of appropriate surveys, agreements, and other relevant documents;
3. Enter into contracts with firms experienced in the construction and installation of public sewerage systems;

4. Secure all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the portion of the Village Sewage Collection System; and

5. Submit to the County, for the County's review and approval, all preliminary and final engineering plans and specifications and all permit applications for such new portions of the Village Sewage Collection System.

Further, the Village shall permit the County to conduct such reviews and inspections of the work required to be performed pursuant to this Subsection 4.2B as the County may deem necessary or appropriate to protect its interests.

C. County Obligations. Subject to the conditions and limitations set forth in Article V of this Agreement and to the other terms and conditions of this Agreement and subject, further, to all customary County fees and charges being paid, the County shall have the following obligations with respect to any extension, enlargement, modification, or improvement of the Village Sewage Collection System:

1. The obligation to approve, when completed in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices, all designs, all plans and specifications required to be prepared or supplied pursuant to this Section 4.2; and

2. The obligation to execute, when completed in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices, all permit applications required to be filed pursuant to this Section 4.2, but only when the signature of the County is required by the permitting agency.

## ARTICLE V

### CONDITIONS AND LIMITATIONS

#### 5.1 Conditions Beyond County's Control.

The County shall not be responsible for any failure to perform the undertakings, obligations, and commitments assumed by it pursuant to this Agreement caused by a Force Majeure.

#### 5.2 Conditions Precedent to County Service.

Notwithstanding any other provision of this Agreement, the right of any Customer located within the Village of Gurnee Wholesale Sewer Service Area to receive Sanitary Sewer Service from the County pursuant to this Agreement, and the County's obligation to provide Sanitary Sewer Services to any such Customer, shall be subject to all of the following conditions precedent having first been satisfied:



A. Receipt by the County of all necessary governmental approvals to operate all of the components of the County Sewerage System as may be necessary to provide Sanitary Sewer Service to such Customer pursuant to this Agreement;

B. Connection of the Customer to the Village Sewage Collection System in accordance with this Agreement;

C. The ability of the County to provide Sanitary Sewer Service as required by this Agreement without violating any applicable laws or regulations, including the ability of the NSSD Treatment Plant to accept Sewage that the Village delivers to the County Sewerage System from the Village of Gurnee Wholesale Sewer Service Area for treatment and disposal in compliance with all applicable laws and regulations and the legal right of the County to deliver said Sewage to said plant for such purposes;

D. Payment of required Connection Charges to the County; and

E. All other terms and conditions of this Agreement.

### 5.3 **Limitations on County Service.**

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Village of Gurnee Wholesale Sewer Service Area to receive Sanitary Sewer Service from the County, and the County's obligation to provide Sanitary Sewer Service within the Village of Gurnee Wholesale Sewer Service Area, shall be subject to the following limitations:

1. No new points of connection between the Village Sewage Collection System and the County Interceptors shall be permitted unless authorized in writing by the County Administrator, in which case the precise number, size, and location of such new connections shall be determined by the County, after consultation with the Village and consideration of the Village Comprehensive Plan and other Village ordinances, in accordance with sound engineering practices.

2. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be on a first come-first serve basis and within the limits of available capacity.

3. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be subject to the County Sewer Ordinances and all other applicable laws, ordinances, rules, and regulations, including any Pretreatment standards. Except as otherwise required by federal or state law, no amendment to the County Sewer Ordinances shall be enforced against the Village until 30 days after the County shall have given the Village written notice of such amendment. In addition, the maximum infiltration rate for new Sewers constructed within the Village Sewage Collection System shall conform to the rules and regulations of the

Illinois Environmental Protection Agency.

4. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be subject to all other terms and conditions of this Agreement.

5. The terms and limitations in Section 5.4 of this Agreement.

**5.4 Village of Gurnee West Sewer Service Area.**

A. Designation. The Village of Gurnee West Sewer Service Area is part of the Village of Gurnee Wholesale Sewer Service Area and is subject to the terms and conditions of this Agreement, as well as the special terms and limitations set forth in this Section 5.4.

B. Sanitary Sewer Service. No portion of the Village of Gurnee West Sewer Service Area shall be entitled to receive sanitary sewer services pursuant to this Agreement unless it is located within the corporate limits of the Village and within the NECFPA Regional Area. In addition, the Village shall not offer or extend, and the County shall have no obligation to provide, sanitary sewer service to any Customer within the Village of Gurnee West Sewer Service Area except to the extent that the Customer's premises receiving sanitary sewer service are limited to non-residential uses only, except for residential development existing and having obtained a certificate of occupancy as of the date of this Agreement; and provided that the County shall have no obligation to execute any permits authorizing sanitary sewer service to any Customer within the Village of Gurnee West Sewer Service Area if Village is in breach of the terms of the Intergovernmental Gurnee/County Agreement executed contemporaneously with this Agreement.

C. Property Owner Agreements. The Village agrees that it shall not hereafter annex any territory located within the Village of Gurnee West Sewer Service Area unless the Village has entered into an annexation agreement with the owner(s) of record of such territory, which agreement shall expressly incorporate the terms of this Agreement, and which agreement shall also require the owner(s) of record of such territory and such owner's or owners' successors in interest to such territory to release any claims against the County and the Village with respect to the terms, conditions, and limitations upon sanitary sewer service as set forth in this Agreement. In addition, for all prospective Village Customers whose real property is not subject to an annexation agreement, the Village shall require as a condition of sanitary sewer service that such prospective Village Customers on behalf of themselves and their successors in interest to the real property to be served agree in writing to acknowledge and accept the terms of this Agreement and to release any claims against the County with respect to the terms, conditions, and limitations upon sanitary sewer service as set forth in this Agreement .

D. No Involuntary Annexation. The Village agrees that it will not annex any land within the Village of Gurnee West Sewer Service Area without the owner's prior consent.

**5.5 Additional Limitations on County Service to Certain Areas**

A. Merit Club Property. Notwithstanding any other provision of this

Agreement, the County shall have no obligation to accept and the Village shall have no right to deliver to the County Sewerage System more than 1,000 P.E. of sewage from that certain land generally lying southwest of the intersection of Milwaukee Road and Illinois Route 120 in Lake County, Illinois (the "Merit Property"), as depicted on Exhibit A attached hereto. The Merit Property is part of the Village of Gurnee Wholesale Sewer Service Area and is subject to the terms and conditions of this Agreement, as well as the special terms and limitations set forth in this Section 5.5.A.

- B. Grand-Hunt Property. Notwithstanding any other provision of this Agreement, the County shall have no obligation to accept and the Village shall have no right to deliver to the County Sewerage System more than 13,840 P.E. of sewage from that certain land generally lying south of Grand Avenue, north of Washington Street, west of Hunt Club Road, and east of U.S. Route 45 and Knowles Road in Lake County, Illinois (the "Grand-Hunt Property"), as depicted on Exhibit A attached hereto. The Grand-Hunt Property is part of the Village of Gurnee Wholesale Sewer Service Area and is subject to the terms and conditions of this Agreement, as well as the special terms and limitations set forth in this Section 5.5.B.
- C. 30-Acre Parcel. Notwithstanding any other provision of this Agreement, the County shall have no obligation to accept and the Village shall have no right to deliver to the County Sewerage System more than 210 P.E. of sewage from that certain land generally lying west of U.S. Tollway 94 and north of Stearn School Road, consisting of approximately 30 acres, in Lake County, Illinois (the "30-Acre Parcel"), as depicted on Exhibit A attached hereto. Moreover, development of the 30-Acre Parcel shall be limited to office/research uses. The 30-Acre Property is part of the Village of Gurnee Wholesale Sewer Service Area and is subject to the terms and conditions of this Agreement, as well as the special terms and limitations set forth in this Section 5.5.C.

## ARTICLE VI

### CHARGES AND FEES

#### 6.1 Village Payment of County Sewer User Fees and Connection Charges.

A. The Village shall be obligated to pay the County, from revenues derived from the operation of the Village Sewage Collection System, Connection Charges and Sewer User Fees relating to the use of the County Sewerage System for Sanitary Sewer Service by Customers within the Village of Gurnee Wholesale Sewer Service Area as provided for in this Article VI.

B. The Village shall make payment in full of charges due to the County pursuant to Section 6(A) above within fifteen (15) days after the due date of its periodic Customer service billing. Daily interest charges for late payments to the County shall be assessed against the Village at a rate of twelve percent per annum or the maximum rate allowed by law, whichever is less. A summary statement of Customers and amounts billed shall accompany each payment. A complete statement of accounts and billing records shall be made available to the County upon request. In addition, the County shall have access to the Village's records relating to the Village Sewage Collection System.

C. The Village, on behalf of the County, assumes the responsibility to collect, and shall be responsible for payment to the County of, all Connection Charges and Sewer User Fees as provided for in this Agreement.

#### **6.2 Connection Charges.**

A. In General. The Village shall collect from every Customer located within the Village of Gurnee Wholesale Sewer Service Area hereafter connecting, either directly or indirectly, to the County Sewerage System a Connection Charge at the same rate as the County from time-to-time charges for similar Sanitary Sewer Services provided by the County through similar facilities of the County Sewerage System. The County shall be solely responsible for setting such Connection Charges, subject to the adjustment provisions in Section 6.5 of this Agreement.

#### **6.3 Sewer User Fees.**

The Village shall bill and collect from every Customer located within the Village of Gurnee Wholesale Sewer Service Area Sewer User Fees based upon the actual volume, strength, and composition of Sewage delivered to the County Sewerage System from such Customer. The County shall be solely responsible for setting such Sewer User Fees, in an amount and in a manner permitted by law, subject to the adjustment provisions in Section 6.5 of this Agreement.

#### **6.4 Metering.**

The County shall have the right to establish and enforce reasonable requirements for all Customers located within the Village of Gurnee Wholesale Sewer Service Area for the installation, calibration, inspection, maintenance, repair, and replacement of meters to measure each Customer's Sewage or water use for the purpose of establishing and billing Sewer User Fees. Nothing in this Section 6.4 shall be deemed to limit the County's right to estimate any Customer's water consumption for the purpose of establishing and billing Sewer User Fees or to limit the County's ability to establish minimum periodic charges. Upon request of the County or at the Village's option, the Village shall, at its own expense, furnish, install, own, operate, and maintain Meters and related equipment of standard type for measuring all Sewage delivered by the Village to the County Sewerage System. Such Meters may be located where the Village's connecting Sewers connect to the respective County interceptors. The County shall have access at all reasonable times to such Meters for inspection and examination. All calibration, adjustment, reading, and recording of such Meters shall be the Village's responsibility.

6.5 **Adjustments to Fees and Charges.**

A. **Level of Sewer User Fees.** Sewer User Fees shall be uniform for all Customers receiving similar Sanitary Sewer Service within the County Sewerage System. Such Sewer User Fees shall at all times be set at levels designed to assure that County revenues from such Fees will always be sufficient, when considered in light of any other monies legally available for and applied to such purposes, (i) to provide adequate and proper levels of service; (ii) to pay the County's costs of maintenance, replacement, and operation; (iii) to pay the principal of, and premiums and interest on, bonds secured, in whole or in part, by the revenues of the County Sewerage System; (iv) to provide a reasonable depreciation fund; and (v) to provide such other reserves and sinking funds as may be deemed necessary or desirable by the County for the payment of such bonds and for the replacement, extension, and improvement of the County Sewerage System.

B. **Level of Connection Charges.** The County may adjust Connection Charges (other than Relief Sewer Special Connection Fees as authorized pursuant to Section 6.2B of this Agreement) for new Customers receiving Sanitary Sewer Services as may be deemed necessary or desirable by the County either (i) to meet financial obligations of, or to defray costs relating to, the County Sewerage System, or (ii) to pass-through adjustments in Connection Charges assessed under the NSSD Agreement; provided that such Connection Charges shall at all times be reasonable and uniform among Customers of the County Sewerage System receiving similar Sanitary Sewer Services.

C. **Procedure for Adjusting Connection Charges and Sewer User Fees.** Except as hereinafter provided in Section 6.5.D, adjustments in Connection Charges shall not be effective until 45 days after the County delivers written notice of the adjustment to the Village, nor shall adjustments in Sewer User Fees be effective until 90 days after the County delivers written notice of the adjustment to the Village. In addition, not less than 30 days prior to the County's final consideration of any proposed adjustments in Connection Charges or Sewer User Fees, the County shall give the Village written notice by certified mail of such proposed adjustments. The County shall include with such notice copies of all audits, engineering reports, financial analysis, or any other data upon which the proposed adjustment is based. The County shall provide, within 30 days after a written request from the Village, such additional information that the Village may reasonably request relating to a proposed adjustment; provided, however, that such request for additional information does not prevent the County from final consideration of any proposed adjustment in the interim.

D. **Changes in Treatment Rates.** Any increase in Connection Charges or Sewer User Fees required by the NSSD in order to meet requirements of the NSSD Treatment Plant shall be reflected in the amounts the County charges Village Customers, without the need for additional hearings.

**6.6     Service Conditioned on Payment.**

The Village shall not issue any temporary or final certificate of occupancy for any building, structure, or Customer within the Village of Gurnee Wholesale Sewer Service Area unless and until all Connection Charges due to the County have been paid to the Village.

**6.7     Village Service Charges.**

Nothing in this Agreement shall limit the Village's discretion in establishing reasonable fees and rates related solely to the Village Sewage Collection System for its Customers, so long as such fees and rates (along with other funds allocated for such payments) are at all times sufficient to permit the Village to meet its obligations under this Agreement.

**ARTICLE VII**

**OWNERSHIP AND MAINTENANCE**

**7.1     County Sewerage System.**

The County shall retain ownership of all Sewers and other facilities in the County Sewerage System that it now owns, or that it may in the future construct, or that it may in the future accept dedication of from the Village or any other person or entity. The County shall maintain and operate the County Sewerage System and shall bear all risk of loss or damage to each said system, all at its sole cost.

**7.2     Village Sewage Collection System.**

The Village shall retain ownership of all Sewers and related facilities in the Village Sewage Collection System that it now owns or that it may in the future construct, or that it may in the future accept dedication of from any person or entity, including but not limited to any future extensions thereto that are now located or that may be located within the Village, but excluding any County Interceptors that the County now owns or may in the future construct for transmission of Sewage from or through the Village or any other facilities the County may construct in, or accept dedication of from, the Village. The Village shall maintain and operate the Village Sewage Collection System and shall bear all risk of loss or damage to said system, all at its sole cost.

## ARTICLE VIII

### FPA AMENDMENTS

#### 8.1 Joint Action.

In order to promote sound public sewer planning and the efficient and economical use of County and Village facilities being installed and maintained pursuant to this Agreement:

A. The County shall file, and the Village shall support, any application that may be required to amend the Illinois Water Quality Management Plan with respect to the development of the County Sewerage System.

B. The Village shall file, and the County shall support, any application that may be required to amend the Illinois Water Quality Management Plan with respect to the development of the Village Sewage Collection System, including any application to amend the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois so as to allow the transfer of the parcels within the Village of Gurnee West Sewer Service Area identified in Exhibit C attached to this Agreement from the Northeast Lake Facilities Planning Area into the Northeast Central Lake Facilities Planning Area.

C. Neither the Village, unless authorized pursuant to Section 5.4 of this Agreement, nor the County shall file or support any application to amend, and the County and the Village shall undertake joint and cooperative action to oppose and object to any petition to amend, the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois so as to prevent the Village and the County from providing Sanitary Sewer Service to any lot, parcel, or tract within the Village of Gurnee Wholesale Sewer Service Area, in the manner provided by this Agreement. In addition, neither the County nor the Village shall file or support any petition to amend, the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois unless such party shall first have given notice to the other party at least 30 days before the filing of such petition or statement of support. For purposes of this Section 8.1A, joint and cooperative action shall include, without limitation, filing written objections, providing staff support, and retaining such attorneys and consultants as the parties mutually agree, or independently determine, are necessary with respect to such objections. In addition, either Party may unilaterally and at its sole cost and expense take such actions as it deems appropriate (including without limitation the hiring of attorneys and consultants) to challenge a petition to amend the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois, provided that such unilateral action is not inconsistent with this Agreement.

**8.2 Exceptions.**

Nothing in Section 8.1 of this Agreement shall require the County or the Village to take any action that it is prohibited from taking, or to refrain from taking any action that it is required to take, pursuant to any agreement that such party approved by formal action of its corporate authorities prior to the Effective Date of this Agreement.

**ARTICLE IX**

**OTHER CONTRACTS AND SERVICE**

**9.1 County Rights.**

The County shall have the right to contract with other persons, natural or corporate, private or public, to perform services similar to those to be performed pursuant to this Agreement; provided, however, that nothing in this Agreement shall be construed to require the County to provide Sanitary Sewer Service to any area of the Village not located within the Village of Gurnee Wholesale Sewer Service Area.

**9.2 Village Acknowledgements.**

The Village acknowledges and agrees that: (i) the County does not act or operate as a public or private utility; (ii) the County does not act or operate in a business or proprietary capacity in providing Sanitary Sewer Service to lots, tracts, parcels, or areas within the Village of Gurnee Wholesale Sewer Service Area; (iii) the County does not by this Agreement, or its performance pursuant to this Agreement, hold itself out as offering to, and is under no obligation to, provide Sanitary Sewer Service to any lot, tract, parcel, or area other than lot, tracts, parcels, or areas located within the Village of Gurnee Wholesale Sewer Service Area; and (iv) the County's sole obligation to provide Sanitary Sewer Service to lots, tracts, parcels, or areas within the Village of Gurnee Wholesale Sewer Service Area is the contractual obligation set forth in this Agreement.

**9.3 Other County Service.**

Nothing in this Agreement shall be construed or interpreted to prevent or limit the right of the County, or to require the consent of the Village, to provide Sanitary Sewer Service to parties other than the Village on such terms and conditions as the County may, in its sole discretion, determine to be appropriate, including, without limitation, Sanitary Sewer Service utilizing the County Sewerage System; provided, however, that the County shall not provide Sanitary Sewer Service within the Village of Gurnee Wholesale Sewer Service Area except in accordance with the terms and conditions of this Agreement.

**9.4 No Third Party Beneficiaries.**

Nothing in this Agreement shall create, or be construed or interpreted to create, any third party beneficiary rights.



9.5 **Water Service.**

This Agreement does not pertain to public water supply service within the Village and shall not affect the rights or obligations of either the County or the Village with respect to such service within the Village.

9.6 **Retail Sewer Service.**

The parties acknowledge and agree that this Agreement does not alter or otherwise affect the Agreement for Retail Sewer and Water Services entered into by the Parties concurrently with this Agreement, or any amendments to such agreement that the parties may enter from time-to-time.

**ARTICLE X**

**LEGAL RELATIONSHIPS AND REQUIREMENTS**

10.1 **Exhibits.**

Exhibits A and B attached to this Agreement are, by this reference, incorporated into and made a part of this Agreement.

10.2 **Entire Agreement; Supersedence of Prior Sewage Agreement.**

There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which either of the parties is relying in entering into this Agreement. In addition, this Agreement is intended to supersede and render of no further force or effect the Prior Sewage Agreement (including all amendments thereto).

10.3 **Amendments.**

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized consent of the County and the Village.

10.4 **Waivers.**

No term or condition of this Agreement shall be deemed waived by either party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provisions of this Agreement.

#### **10.5 Interpretation and Severability.**

It is the intent of the parties that the Village of Gurnee West Sewer Service Area be developed for non-residential purposes, except for existing residential development having obtained a certificate of occupancy as of the date of this Agreement, and that this Agreement has been entered into, in part, to further that purpose. It is the further intent of the County and the Village that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. Notwithstanding the foregoing, to the extent that a third party should initiate litigation and succeed in a claim that would otherwise have the effect of permitting or authorizing the extension of sanitary sewer service to residential development to one or more parcels within the Village of Gurnee West Sewer Service Area (including the entire Village of Gurnee West Sewer Service Area, if applicable), then this Agreement shall be interpreted to automatically remove and exclude such parcel or parcels from the Village of Gurnee Wholesale Sewer Service Area and the Village of Gurnee West Sewer Service Area and any provision of this Agreement to the contrary shall be deemed null and void.

#### **10.6 Regulatory Bodies.**

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section 10.6 shall not be construed as waiving the right of any party to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement. The County reserves the right to adopt ordinances, rules, and regulations governing the design, installation, and use of the County Sewerage System.

#### **10.7 Successors; Assignment.**

This Agreement shall be binding on, and shall inure to the benefit of the successors and permitted assigns of the County and the Village. The Village shall not assign this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written consent of the County, which consent may be withheld in the sole and unfettered discretion of the County. The County may, upon notice to the Village, assign this Agreement, in whole or in part, or any or all of the County's rights or obligations under this Agreement, without the consent of the Village.

#### **10.8 Effective Date and Term.**

A. Effective Date. This Agreement shall take effect as of the date first above written when executed by the duly authorized representatives of the County and the Village.

B. Term. This Agreement shall be in full force and effect for a period of 20 years from and after its Effective Date.

10.9 **Notices.**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the County:

County of Lake  
18 North County Street  
Waukegan, Illinois 60065  
Attn: County Administrator

and

Lake County Department of Public Works  
650 Winchester Road  
Libertyville, Illinois 60046  
Attn: Superintendent

For notices and communications to the Village:

Village of Gurnee  
Attn: Village Administrator  
325 N. O'Plaine Road  
Gurnee, Illinois 60031

By notice complying with the foregoing requirements of this Section 10.9, each party shall have the right to change the addressees or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

10.10 **Execution in Counterparts.**

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

10.11 **Enforcement.**

A. Remedies. The parties hereto may in law or in equity enforce or compel the performance of this Agreement and shall otherwise have all remedies provided by applicable

United States of America, State of Illinois, and local laws, ordinances, rules, and regulations, except that neither the Village nor the County shall seek or recover monetary damages against the other or any of the other's officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

B. Attorney Fees. Each party shall bear its own costs and expenses (including attorneys' fees) incurred in any judicial or administrative proceeding brought for enforcement or breach of any provision of this Agreement.

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written.

VILLAGE OF GURNEE

By: \_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk

COUNTY OF LAKE

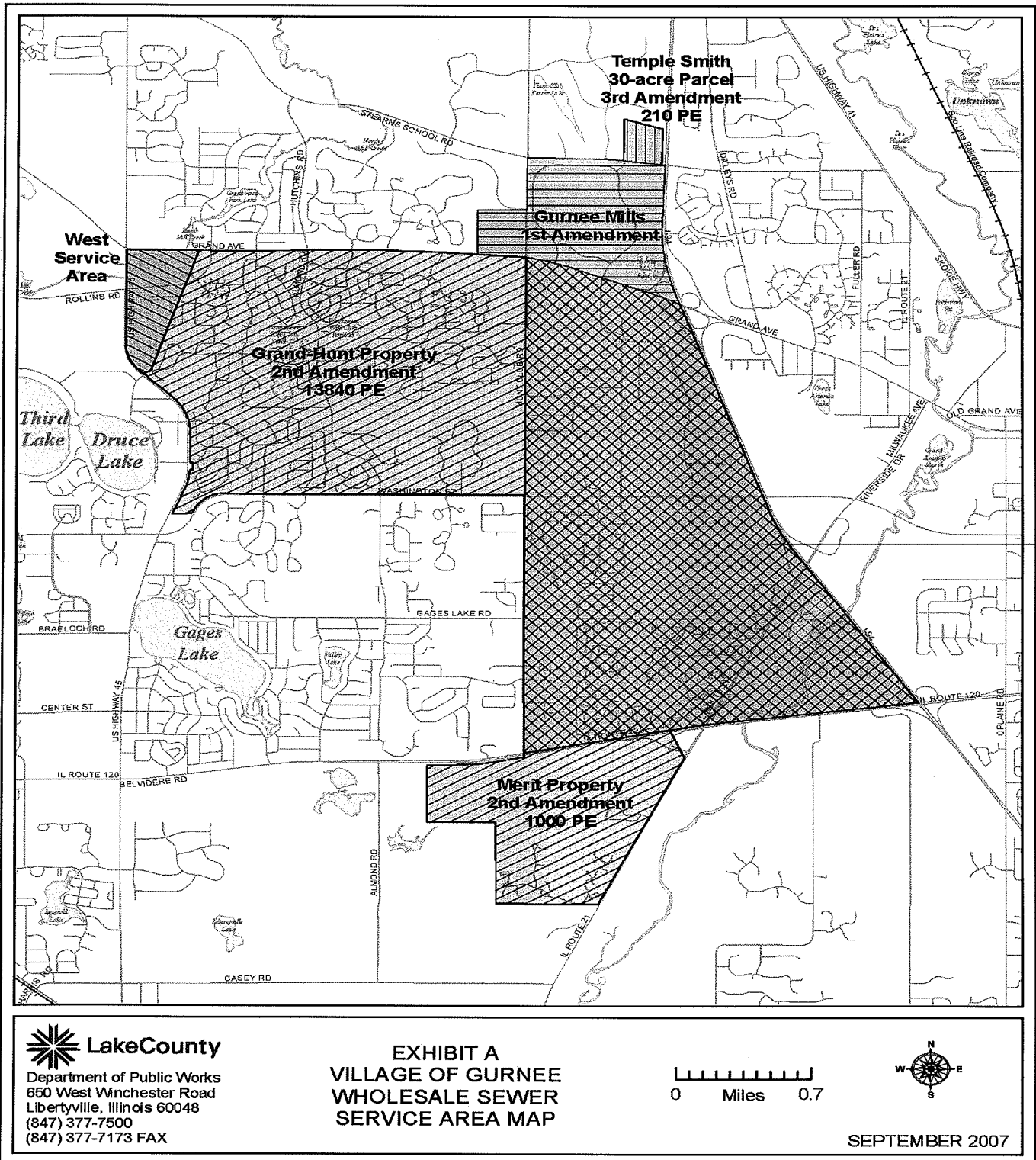
By: \_\_\_\_\_  
Chairman, Lake County Board

ATTEST:

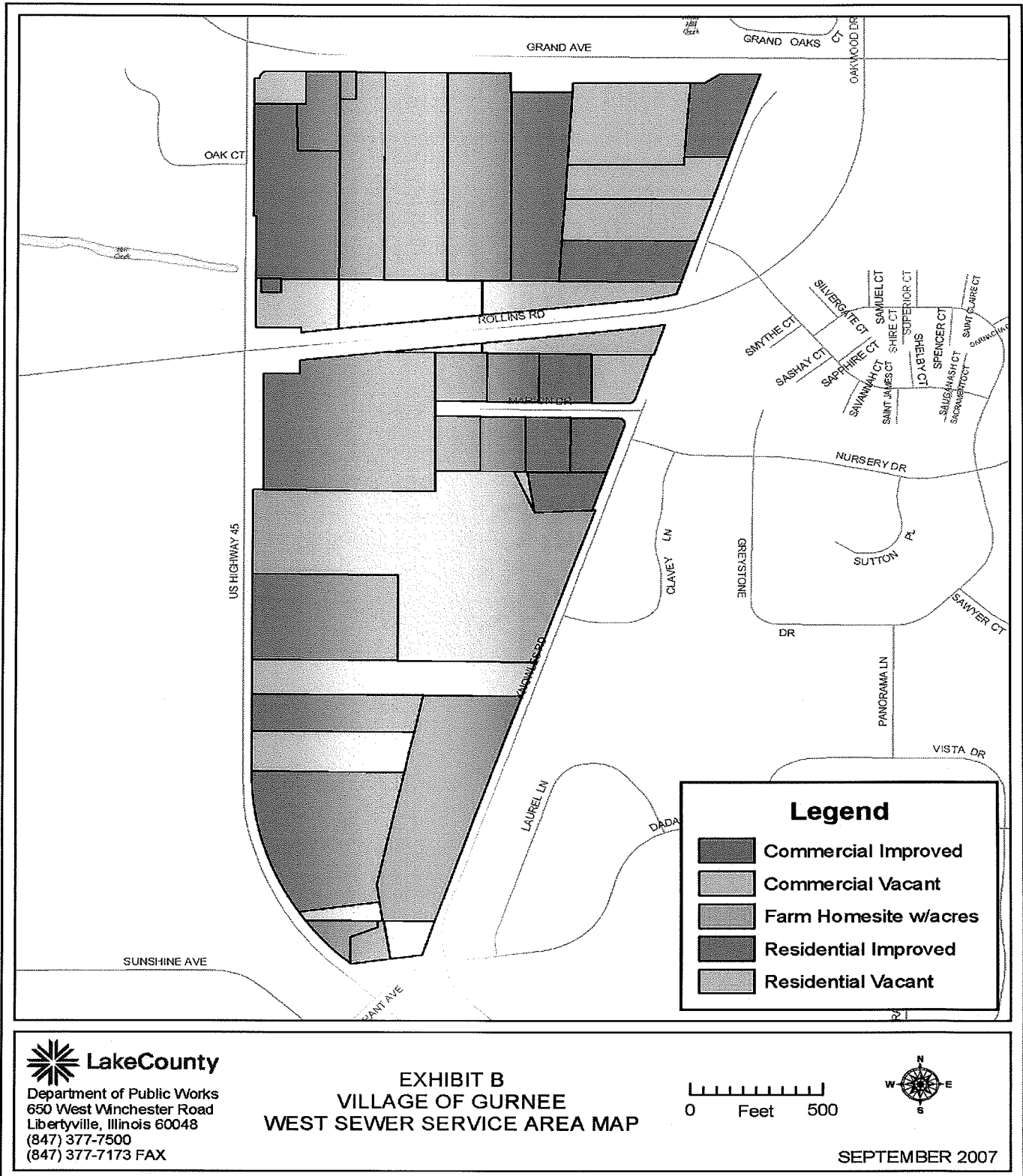
\_\_\_\_\_  
County Clerk

## EXHIBIT A

### Village of Gurnee Wholesale Sewer Service Area Map



## Village of Gurnee West



**Parcels Within the Village of Gurnee West Sewer Service Area Currently Located Within the Northeast Lake FPA**



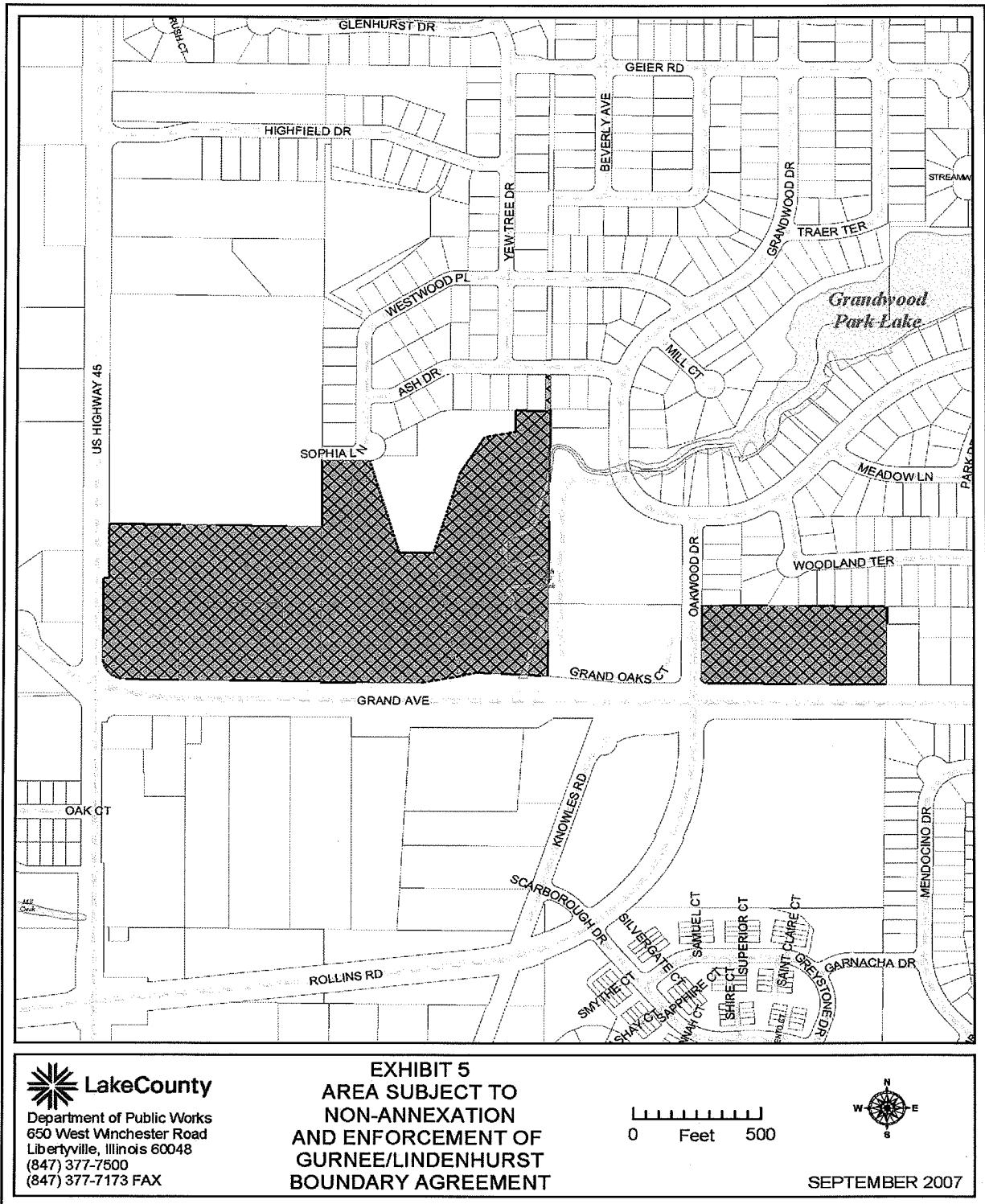
EXHIBIT C  
PARCELS WITHIN THE VILLAGE OF GURNEE  
WEST SEWER SERVICE AREA CURRENTLY  
LOCATED WITHIN THE NORTHEAST LAKE FPA



SEPTEMBER 2007



# EXHIBIT 5 (IGA)



1597